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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-rdd

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5 In the Matter of:

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7 SEARS HOLDINGS CORPORATION,

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9 Debtor.

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12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 October 15, 2018

17 2:13 PM

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: NAROTAM RAI

1 HEARING re Notice of Hearing/ Notice of Commencement of
2 Chapter 11 Cases and Agenda for First Day Hearing Motion of
3 Debtors for Entry of Order Directing Joint Administration of
4 Related Chapter 11 Cases filed by Ray C Schrock on behalf of
5 Sears Holdings Corporation. (document#4)

6

7 HEARING re Debtors Motion for Authority to (A) Obtain
8 Postpetition Financing, (B) Use Cash Collateral, (C) Grant
9 Certain Protections to Prepetition Secured Parties, and (D)
10 Schedule Second Interim Hearing and Final Hearing (document
11 #7)

12

13 HEARING re Motion of Debtors For Authority to (I) Continue
14 Using Existing Cash Management System, Bank Accounts, and
15 Business Forms, (II) Implement Ordinary Course Changes to
16 Cash Management System, (III) Continue Intercompany
17 Transactions, and (IV) Provide Administrative Expense
18 Priority for Postpetition Intercompany Claims and Related
19 Relief (document #5)

20

21 HEARING re Motion of Debtors for Entry of Order Implementing
22 Certain Notice and Case Management Procedures (document #22)

23

24

25

1 HEARING re Motion of Debtors for Entry of Order (I)
2 Authorizing but Not Directing the Debtors to (A) Pay Certain
3 Prepetition Wages and Reimbursable Employee Expenses, (B)
4 Pay and Honor Employee Medical and Other Benefits, and (C)
5 Continue Employee Benefits Programs, and (II) Granting
6 Related Relief (document #31)

7

8 HEARING re Motion of Debtors for Authority to Pay Certain
9 Prepetition Taxes and Fees (document #19)

10

11 HEARING re Motion of Debtors for Authorization to (I)
12 Continue, Maintain, and Renew Their Insurance Policies and
13 Workers Compensation Programs; (II) Honor all Obligations
14 with Respect Thereto; and (III) Modify the Automatic Stay
15 with Respect to the Workers Compensation Programs (document
16 #17)

17

18 HEARING re Motion of Debtors for Entry of Interim and Final
19 Orders (I) Authorizing Debtors to Pay Certain Prepetition
20 Obligations to Critical Vendors, (II) Approving Procedures
21 to Address Vendors who Repudiate and Refuse to Honor Their
22 Contractual Obligations to The Debtors, and (III) Granting
23 Related Relief (document #18)

24

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1 HEARING re Motion of Debtors for Interim and Final Authority
2 to (I) Pay Prepetition Claims of (A) Shippers, Warehousemen,
3 and Other Non-Merchandise Lien Claimants, and (B) Holders of
4 PACA/PASA Claims, and (II) Confirm Administrative Expense
5 Priority for Prepetition Order Delivered to the Debtors
6 Postpetition and Satisfy Such Obligations in the Ordinary
7 Course of Business (document #10)

8

9 HEARING re Motion of Debtors for Interim and Final Authority
10 to (I) Pay Prepetition Claims of (A) Shippers, Warehousemen,
11 and Other Non-Merchandise Lien Claimants, and (B) Holders of
12 PACA/PASA Claims, and (II) Confirm Administrative Expense
13 Priority for Prepetition Order Delivered to the Debtors
14 Postpetition and Satisfy Such Obligations in the Ordinary
15 Course of Business (document #14)

16

17 HEARING re Motion of Debtors for Authority to (I) Maintain
18 Certain Trust Fund Programs, (II) Release Certain Funds Held
19 in Trust, and (III) Continue to Perform and Honor Related
20 Obligations (document #15)

21

22 HEARING re Motion of Debtors for Interim and Final Orders
23 Establishing Notification Procedures and Approving
24 Restrictions on Certain Transfers of Interests in, and
25 Claims Against, the Debtors and Claiming a Worthless Stock

1 Deduction (document #20)

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3 HEARING re Motion to Extend Deadline to File Schedules or
4 Provide Required Information / Motion of Debtors for Entry
5 of Order Extending Time to File Schedules of Assets
6 and Liabilities, Schedules of Executory Contracts and
7 Unexpired Leases, and Statement of Financial Affairs
8 (document 328)

9

10 HEARING re Motion of Debtors for Entry of Order (1) Waiving
11 the Requirement to (A) File List of Creditors (B) Prepare
12 and File the List of Equity Security Holders and (C)
13 Provide Equity Security Holders with the Notice of
14 Commencement, and (11) Granting Debtors Authority to
15 Establish Procedures for Notifying Creditors of
16 Commencement of Chapter 11 Cases (document #21)

17

18 HEARING re Application of Debtors Pursuant to 11 U.S.C. §
19 105 (a), 28 U.S.C § 156(c), and Local Rule 5075-1 for an
20 Order Appointing Prime Clerk LLC as Claims and
21 Noticing Agent (document #27)

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23

24

25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 SKADDEN, ARPS, SLADE, MEAGHER & FLOM LLP

4 Attorneys for DIP ABL Agent

5 4 Times Square

6 New York, NY 10036

7

8 BY: PAUL D. LEAKE

9 GEORGE R. HOWARD

10 SHANA A. ELBERG

11

12 MILBANK, TWEED, HADLEY & MCCLOY LLP

13 Attorneys for Cyrus Capital Management

14 2029 Century Park East, 33rd Floor

15 Los Angeles, CA 90067

16

17 BY: ERIC R. REIMER

18 THOMAS R. KRELLER

19

20 CHOI & PARK, LLC

21 11 Broadway, Suite 615

22 New York, NY 10004

23

24 BY: HYUN SUK CHOI

25

1 KELLEY DRYE & WARREN LLP

2 101 Park Avenue

3 New York, NY 10178

4

5 BY: ROBERT L. LEHANE

6

7 DAVIS POLK & WARDWELL LLP

8 Attorneys for CitiBank

9 450 Lexington Avenue

10 New York, NY 10017

11

12 BY: MARSHALL S. HUEBNER

13

14 JENNER & BLOCK LLP

15 Attorneys for Electrolux

16 919 Third Avenue

17 New York, NY 10022

18

19 BY: MARC B. HANKIN

20

21

22

23

24

25

1 WEIL, GOTSHAL & MANGES LLP
2 Attorneys for the Debtor
3 767 Fifth Avenue
4 New York, NY 10153

5

6 BY: RAY C. SCHROCK
7 JARED R. FRIEDMANN
8 PAUL R. GENENDER

9

10 BALLARD SPAHR LLP
11 1675 Broadway, 19th Floor
12 New York, NY 10019

13

14 BY: DAVID L. POLLACK
15 DUSTIN T. BRANCH (TELEPHONICALLY)

16

17 CHIESA SHAHINIAN & GIANTOMASI PC
18 One Boland Drive
19 West Orange, NJ 07052

20

21 BY: SCOTT A. ZUBER

22

23

24

25

1

2 CHOATE

3 Attorneys for Wells Fargo

4 Two International Place

5 Boston, MA 02110

6

7 BY: KEVIN J. SIMARD

8

9 LOCKE LORD LLP

10 111 South Wacker Drive

11 Chicago, IL 60606

12

13 BY: DAVID W. WIRT

14

15 CLEARY GOTTLIEB STEEN & HAMILTON LLP

16 Attorneys for ESL

17 One Liberty Plaza

18 New York, NY 10006

19

20 BY: SEAN A. O'NEAL

21 JAMES L. BROMLEY

22

23

24

25

1 UNITED STATES DEPARTMENT OF JUSTICE

2 Attorney for the U.S. Trustee

3 201 Varick Street, Suite 1006

4 New York, NY 10014

5

6 BY: PAUL K. SCHWATZBERG

7 RICHARD C. MORRISSEY

8

9 GOODWIN PROCTER LLP

10 Attorneys for Waste Management National Services

11 620 Eighth Avenue

12 New York, NY 10018

13

14 BY: GREGORY W. FOX

15

16 BAKER HOSTETLER

17 45 Rockefeller Plaza

18 New York, NY 10111

19

20 BY: FERVE KHAN

21

22

23

24

25

1 ALSO APPEARING TELEPHONICALLY:
2 JULIAN BULAON
3 GINGER CLEMENTS
4 CINDY DELANO
5 TED A. DILLMAN
6 PETER M. GILHULY
7 RONALD E. GOLD
8 ADAM J. GOLDBERG
9 TAYLOR B. HARRISON
10 BRENT HERLIHY
11 CATHY HERSCHOFF
12 EDWARD M. KING
13 SIDNEY P. LEVINSON
14 KEITH MARTORANA
15 KEVIN MCCOLGAN
16 SUMMER M. MCKEE
17 ADAM S. RAVIN
18 DAVID ROSENZWEIG
19 MITCHELL SEIDER
20 ERIN P. SEVERINI
21 WENDY SIMKULAK
22 RONALD M. TUCKER
23 ADAM J. WEBB
24 RASHIDA ADAMS
25 BARRY BAZIAN

1 JOSH BRANT
2 AMY CARBINS
3 EMMA CARLSON
4 RICHARD CHESLEY
5 MARVIN CLEMENTS
6 RONALD A. CLIFFORD
7 HOWARD A. COHEN
8 ANDREW S. CONWAY
9 KELLY CUSICK
10 ALEXANDER DEFELICE
11 JASON DIBATTISTA
12 JAMIE L. EDMONSON
13 DANIEL M. EGGERMAN
14 NICLAS A. FERLAND
15 ROBERT E. FITZGERALD
16 GREGG M. GALARDI
17 KIMBERLY B. GIANIS
18 STEPHANIE J. GLEASON
19 MICHAEL S. GREGER
20 TAYLOR HAMMOND
21 CRAIG HELMREICH
22 CALEB T. HOLZAEPPFEL
23 ANA LUCIA HURTADO
24 VINCENT INDELICATO
25 WILLIAM M. JONES

1 HAROLD KAPLAN
2 STEVEN C. KRAUSE
3 DAVID E. KRONENBERG
4 JEFFREY KURTZMAN
5 DONNA LIEBERMAN
6 MARK LIGHTNER
7 JONATHAN D. MARSHALL
8 MORGAN J. MCCASKEY
9 MICHELLE M. MCGREAL
10 PATRICK MOHAN
11 BRYANT OBERG
12 THOMAS ONDER
13 JOSEPH A. PACK
14 BRIAN A. RAYNOR
15 STEVEN J. REISMAN
16 LILLIAN A. RIZZO
17 BETH E. ROGERS
18 ADAM ROGOFF
19 JASON B. SANJANA
20 MICHELLE E. SHIRO
21 PETER B. SIROKA
22 MICHAEL A. SMITH
23 CHRIS STAUBLE
24 RICHARD A. STIEGLITZ
25 ERIC STODOLA

1 MICHAEL B. SULLIVAN

2 BRAD SWEENEY

3 RONALD M. TUCKER

4 MICHAEL J. WALSH

5 MEGAN WASSON

6 JAMILA WILLIS

7 ERIC R. WILSON

8 JAMES WILTON

9 EVAN J. ZUCKER

10

11

12

13

14

15

16

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18

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1 P R O C E E D I N G S

2 THE COURT: Good morning. In re Sears Holding,
3 Corporation.

4 MR. SCHROCK: Good afternoon, Your Honor. Ray
5 Schrock, Weil, Gotshal & Manges, proposed counsel for Sears
6 Holdings and its affiliated debtors and debtors in
7 possession. Your Honor, with me today in the courtroom that
8 will be presenting in addition to myself will be Sunny Singh
9 from Weil, Gotshal, Jackie Marcus, Jessica Liou, and Paloma
10 Van Groll.

11 THE COURT: Okay.

12 MR. SCHROCK: Your Honor, first, I'd just like to
13 thank the Court for getting us into court so quickly. It
14 was absolutely critical that we do this today. We know that
15 we threw quite a bit of paper at the Court at the last
16 minute, and we've been involved in marathon negotiations, at
17 least according to most major news sources.

18 THE COURT: Okay. All right. Well, I've been
19 able to go through the binder and the pleadings, so that's
20 no problem.

21 MR. SCHROCK: Thank you, Your Honor.

22 Your Honor, also in courtroom with me today are
23 Rob Riecker. He is the company's chief financial officer,
24 also a member of the newly formed office of the CEO. Also
25 in the courtroom is our chief restructuring officer, Mo

1 Meghji, of M-III Partners.

2 THE COURT: Good afternoon.

3 MR. SCHROCK: And our investment banker, Brandon
4 Aebersold of Lazard.

5 THE COURT: Good afternoon.

6 MR. SCHROCK: Your Honor, before we get started, I
7 would like to -- also to thank the senior lenders and ESL.
8 We've been negotiating for many, many days trying to put
9 together debtor in possession financing for Sears that's
10 critical to its ongoing operations because they do
11 appreciate their support.

12 We've worked with the U.S. Trustee prior to
13 arriving here. I think -- I believe we've resolved all of
14 their concerns. There was one objection to the DIP
15 financing filed by American Greetings, but we have resolved
16 our concerns because they are part of the relief in the
17 trust fund motions.

18 THE COURT: Okay.

19 MR. SCHROCK: Your Honor, we did file an agenda.
20 It's at Docket Number 13. But before we get started, if
21 you'll allow me just for the parties in interest, we do have
22 a quick demonstrative that we'd like to give the Court an
23 overview of the proceedings and the case.

24 THE COURT: Okay.

25 MR. SCHROCK: And we do have copies for anybody --

1 I think they grabbed them all I believe we do have
2 (indiscernible) copies.

3 THE COURT: Okay.

4 MR. SCHROCK: This is similar to the one you had
5 before. It's just got non-debtor (indiscernible).

6 THE COURT: All right.

7 MR. SCHROCK: Your Honor, on behalf of Sears and
8 its more than 68,000 employees, again, I want to emphasize
9 to the Court that we are very grateful for Your Honor taking
10 the time to be able to meet with us today and hear the
11 company's request for emergency relief to avoid irreparable
12 harm to the estate.

13 I think that, you know, just in terms of
14 recognizing what Sears is, I think everybody knows Sears is
15 an American icon. It used to be the largest retailer in the
16 country at one time. It's certainly been a part of many
17 people's lives and, you know, has continued to be part of
18 many people's lives, you know, even into the 21st century.

19 Sears first began operating stores back in 1925.
20 They moved from rural to urban areas. They supplemented
21 their catalog business and quickly expanded their portfolio
22 beyond retail from 1930 to 1980. They used to own Allstate
23 Insurance, Dean Whitter, Coldwell Banker, Discover card.
24 They founded -- they, you know, were the owner of the Sears
25 Tower. And, you know, really when you get to know the store

Page 18

1 and the corporation a little more, it's amazing with the
2 corporation this age, size, and scale exactly what is still
3 owned within the estate.

4 Now, as Your Honor may know, in 2004, Sears merged
5 with Kmart Holding following Kmart's emergence from Chapter
6 11. Sears Holdings was formed to serve as the parent entity
7 of that post-merger reorganization. The company has
8 undergone quite a few store reductions even prior to
9 entering Chapter 11, but the company still operates 687
10 Sears, Kmart, and Sears Auto Center locations in 49 states,
11 Guam, Puerto Rico, and the U.S. Virgin Islands. And as we
12 did mention, the company employs approximately 68,000
13 people.

14 I'm going to go a little bit out of order here,
15 Judge, and just point out something regarding the key
16 stakeholders in this case. Despite the company's sprawling
17 size and scope, the number of key players that I think Your
18 Honor will see in the stakeholder groups and the capital
19 structure is relatively manageable.

20 There's the ABL and first lien turn loan lenders.
21 They're represented by Skadden Arps and BRG. 2L notes have
22 some other -- there are various counsel, but they are
23 substantially similar holders to the first lien notes.
24 There are real estate loans that are owned by Cascade, ESL
25 Investments, the company's largest shareholder, represented

1 by Cleary Gottlieb and Moelis & Company. They're also the
2 company's largest creditor; the PBGC, represented by PJT
3 Partners Locke Lord. The unsecured noteholders, the largest
4 claim Fairholme, represented by Sullivan & Cromwell. The
5 landlord are various, but certainly there's quite a bit of
6 concentration within the large maul of landlords.

7 The vendors, there's many vendors. There's 12,000
8 vendors to the company, which is obviously a large group.
9 But the company's trade credit has been substantially
10 limited coming into Chapter 11. And what we've seen is that
11 as the company has continued to suffer losses, it's
12 continued to struggle, its trade credit was not surprisingly
13 substantially compressed. So most of the trade credit is
14 within the 503(b)(9) 20-day threshold.

15 You know, the Debtors, we've already introduced
16 who their professionals are. But, you know, for us and I
17 think everybody involved in this case, including all of the
18 lenders, all the stakeholders, this case is very much about
19 the nearly 70,000 employees that are still working for Sears
20 and were here to fight for Sears and give them a chance to
21 reorganize.

22 I think that given the complexity of Sears'
23 capital structure, we did find the chart to be helpful. And
24 we've got a column on the chart that actually notes the ESL
25 ownership percentage of some of the debt instruments, which

1 I think could be relevant as we move forward. The company's
2 DIP lenders are up in the upper left-hand corner, the
3 revolving credit facility lenders as well as the turn loan
4 lenders.

5 And what's being proposed, Your Honor is that the
6 facilities up in the upper left-hand corner, the green box,
7 the revolving credit facility down through the turn loan B,
8 those are the portions of the credit facility that are
9 proposed to be rolled up in a final order. The FILO would
10 not be rolled up, and the -- what's been titled the 1 1/2
11 lien LC facility, which is a cash collateralized LC facility
12 with cash backed by two non-debtors, you know, would stay in
13 place.

14 The 2L credit agreement substantially owned by
15 ESL, that's another \$887 million. The second lien notes,
16 there's PIK toggle notes and 2L notes, those are
17 substantially the same as the first lien. They do not --
18 and for them as well as the second lien credit agreement,
19 they don't have a lien on pharmacy assets or cash.

20 There's a real estate loan that has Cascade and
21 JPP, which is an affiliate of ESL, has 88 properties in that
22 silo. And then there's the sparrow entities. These sparrow
23 entities are in the gray boxes over here in the middle.
24 Those are special purpose entities that hold about 138
25 properties that were released by the PBGC as part of that

1 settlement.

2 And, you know, we've been speaking with them about
3 becoming a debtor. And, you know, we weren't able to get
4 there, you know, due to a discussion about fees, basically
5 amendment fees and the like. But we're going to continue
6 speaking with them. I think that we could see those
7 entities enter the cases and be jointly administered, but
8 the company would just simply -- frankly, we just ran out of
9 time.

10 Another relevant entity to focus on, Judge, is in
11 the lower left-hand corner. It's called KCD IP. That is
12 the PBGC ring-fenced entity that has Kenmore and DieHard in
13 it. That entity did not file Chapter 11. I think they may
14 file Chapter 11. They have an independent director. We had
15 a board meeting with them over the weekend, and they're
16 certainly considering I think what to do next.

17 The reason that's relevant and there's another
18 entity over here called Sears Re over on the upper right-
19 hand corner. What happens is the company pays royalties on
20 account of their intellectual property held in that box KCS
21 or DieHard and Kenmore that that those royalties are then
22 used to pay on account of what are the orange KCD asset-
23 backed notes. So there's notes that go from KCD over to
24 Sears Re. Sears Re is not a debtor. It's a Bermuda
25 insurance company.

1 And what happens with the royalty amounts, they go
2 up through Sears Re and then they put -- the cash is
3 recycled back into the dividend and back up into the
4 structure to be used on account of warranty claims and the
5 like, you know, for products. That structure was put in
6 place, you know, a long time ago, frankly, when there was a
7 -- I think certain advantages to it.

8 But what we're requesting at the first day hearing
9 here, we're not requesting to put money into the KCD box and
10 put it up through Sears Re because what we don't want to
11 have happen is on our royalty -- in our warranty programs,
12 send money into that -- those two entities and have it get
13 stuck outside of the estate. So until we work out what
14 happens there with Sears Re and KCD -- and listen, you know,
15 if KCD is liable on \$900 million worth of notes, you know,
16 there's certainly I think a compelling reason why they would
17 enter the cases. But we will certainly work through that.
18 But I thought that was worth emphasizing, Judge, so you
19 understand the landscape.

20 There's also unsecured notes that are there in the
21 pink and some SRAC notes that are there in purple, which we
22 described in the first day affidavit.

23 The main picture here is, listen, this is a
24 complicated capital structure. It's unlike a lot of capital
25 structures. It's largely silo'd in terms of the collateral.

1 There are still unencumbered assets within Sears. And one
2 of the things that we're focused on as part of the debtor in
3 possession financing is that we are granting a lien as part
4 of the first day -- proposed first day relief on
5 unencumbered assets.

6 But a very important and, frankly, hard-fought
7 negotiated point is that the first \$200 million of proceeds
8 that come from unencumbered asset sales are going to be put
9 in a winddown reserve account. That winddown reserve
10 account is there for the estate that if they sell their
11 assets, if they have an estate that needs to be
12 administered, they're really there to make sure that the
13 company has sufficient funds to always wind down the estate
14 and importantly pay severance, pay other administrative
15 claims of the company.

16 And it's there so that the debtors have a cushion
17 to make sure that we're always going to be administratively
18 solvent in these cases. So that was -- when you look at
19 the puts and takes in the debtor in possession financing
20 negotiation, that \$200 million reserve is something that we
21 think's unique but it's also we think a really benefit for
22 not just the estate but also unsecured creditors in general.

23 I think we've talked basically about the capital
24 structure on page 7. And the circumstances leading to
25 Chapter 11, Judge, I think it's been well-documented that,

1 listen, Sears has been struggling for some time. We've been
2 involved with the company for some time. And I think it's
3 fair to say in our opinion that it's hard to find a company
4 that they tried so very hard to avoid Chapter 11 because
5 they had a good faith belief that they're going to maximize
6 value outside of Chapter 11 and without running through a
7 Chapter 11 proceeding.

8 They believed that there was going to be, you
9 know, significant destruction of value and that, you know,
10 they did everything they could, I think it's fair to say, to
11 try and avoid commencing these Chapter 11 cases. So it's
12 definitely -- it's a very tough day for the company, but
13 we'd like to think that we have a plan that gives Sears a
14 chance to reorganize around a smaller footprint and a chance
15 for, importantly, many tens of thousands of jobs to be
16 saved.

17 But it really has to happen on an expedited time
18 frame. This is really when you look at the cash burn
19 associated with the overhead of the enterprise, it's really
20 something where things have to move very quickly.

21 We did receive, you know, a good deal of support,
22 obviously, in the form of loans that are there from our
23 largest shareholder. But we did want to emphasize we put in
24 place on Page 10 some -- several measures regarding
25 governance. We've appointed two independent directors, Alan

1 Carr and William Transier. We have appointed a CRO who
2 reports to a restructuring committee. That restructuring
3 committee is composed solely of independent directors.
4 There's Mr. Carr, Mr. Transier, there's Ms. Ann Reese, and
5 Mr. DePodesta, Paul DePodesta.

6 The restructuring committee is tasked with
7 overseeing the debtor's restructuring process and has full
8 decision making authority with respect to certain aspects of
9 the Chapter 11 cases. And I think it's fair to say we're
10 going to be pretty deferential as a company to the
11 restructuring committee.

12 We've also formed a subcommittee just with those
13 two new members to review pre-petition transactions
14 involving affiliates, including ESL. That subcommittee has
15 retained Paul Weiss. I believe that they're in the midst of
16 retaining a banker. We already received a document request
17 from those professionals. And they are working very
18 quickly.

19 I won't talk about the DIP financing just yet, but
20 I did want to talk about the timeline on Page 12 that this
21 is a tight timeline. I think it's fair to say that in our
22 experience even for a retail debtor. But we look at this
23 and we say that -- we told ourselves that we have to move
24 quickly if we have a chance to save the enterprise. And
25 there's a lot of people pulling and moving everything

1 possible to see to make sure that we give Sears the best
2 possible chance to reorganize. This is the schedule that
3 we're proposing.

4 We had the first day hearing today. We've
5 proposed store closing procedures, a hearing, and we're
6 working with your chambers on trying to get that set for,
7 you know, within, you know, I think the relatively near
8 term. We have proposed junior debtor in possession
9 financing that's not to be heard today, but we're asking for
10 an interim hearing on that 15 days out while we continue to
11 conduct marketing for that facility to see if it can be
12 improved or if there's better financing available.

13 We've got a second day hearing in early November.
14 And then there's a -- you know, a key decision making point
15 here on November 15th. And that decision -- right now we're
16 looking at closing 142 stores immediately in these cases.
17 There's another set of stores that are being reviewed to
18 determine if we can improve lease terms, can we do other
19 things in the stores to see if we can make them profitable,
20 and is there a way to package them as part of an overall
21 store footprint to see if we can make that part of a going
22 concern sale package.

23 That decision's got to be made relatively quickly.
24 We've been in negotiations with one likely bidder, which is
25 ESL. But we are prepared and will be marketing, you know,

1 those assets immediately and proposing bidding procedures
2 with the Court in the near term.

3 We really believe, especially with the winddown
4 reserve, that Chapter 11 plan negotiations, that moving
5 quickly on a Chapter 11 plan so that we have an opportunity
6 to get the case completed before the administrative costs,
7 frankly, put the company in a difficult spot. It is
8 absolutely critical, so we are going to be talking with our
9 major stakeholders, and we've already begun talking with our
10 major stakeholders, many of them prior to the petition date.

11 The real deadline in these cases as it currently
12 stands -- and this is under the debtor in possession
13 financing in accordance with the company's plan and
14 consistent with our cash flows -- is December 15th, 2018.
15 That is the date by which the company is to receive
16 committed financing for a go-forward store transaction, 60
17 days. We are -- you know, there's possibilities that that
18 date can move around, but right now based upon what we know,
19 that's the date and we're going to be pushing hard toward
20 that.

21 We've got a target date for a plan filing in late
22 December. A disclosure statement hearing in January. The
23 deadline under the DIP financing and consistent with our
24 store plan to have an auction on the go-forward stores is
25 late January, and a deadline to close go-forward -- the go-

1 forward store transaction is February 10th, 2019. And we've
2 got plan confirmation out in March of 2019.

3 So, Your Honor, that is our plan coming into the
4 case. It's moving -- it has to move quickly. We are
5 committed to do whatever we can to move the cases along as
6 expeditiously as possible. And we're -- you know, I believe
7 we have the support of many of our key stakeholders to make
8 sure that happens.

9 There's about 400 stores that are 4-wall EBITDA
10 positive before any lease concessions. We will be engaging
11 a real estate advisor to negotiate with landlords quickly.
12 There could be many other stores that are profitable on a 4-
13 wall basis following that. We think that selling these
14 stores under a 363 sale is probably the best approach to
15 expeditiously preserve as many as going stores as possible.
16 And as I did mention, we have 142 unprofitable stores and
17 are going to move to conduct going out of business sales at
18 those stores, unfortunately, immediately.

19 We are proposing -- I want to emphasize that we
20 continue to honor our severance programs, not for pre-
21 petition severance but on a go-forward basis for non-
22 insiders. That's a really important component of everything
23 that we're doing here. We don't like, obviously, having to
24 sever anyone. But if we're going to give Sears a chance to
25 survive, we must cut the footprint and cut some of these

1 unprofitable locations as quickly as possible.

2 So, Your Honor, that really emphasizes that, you
3 know, for us, you know, time is absolutely of the essence.
4 We have to do this for Sears and its employees. And, you
5 know, we're going to fight, you know, for the right thing to
6 do.

7 Okay. With that, thanks for indulging me.

8 THE COURT: Sure. That came through in the
9 pleadings, too. But it's worth emphasizing for those who
10 haven't read them.

11 MR. SCHROCK: Thank you.

12 You know, before we move in, I'd like to take, if
13 it's acceptable to Your Honor, I'd like to move the
14 declarations we filed with the Court into evidence subject
15 to the right of parties to cross-examine witnesses. I've
16 got the First Day Declaration of Rob Riecker, the CFO, at
17 ECF Number 3; Declaration of Mo Meghji, Chief Restructuring
18 Officer, at ECF Number 10; and the Declaration of Brandon
19 Aerbersold, our investment banker, at ECF Number 9. The
20 last two are in support of the debtor in possession
21 financing.

22 THE COURT: Okay. I've read each of those
23 declarations. I normally ask when I'm requested to admit a
24 declaration whether anyone wants to cross-examine any of the
25 declarants. But anyone here has the right to do that when a

1 particular motion comes up. So I'm not going to ask you to
2 do that at this point. But, again, I've read each of the
3 declarations and unless anyone has any objection to their
4 admission, I'm prepared to admit them into evidence.

5 All right. So they're admitted.

6 MR. SCHROCK: Thank you, Your Honor. Just moving
7 forward in the agenda, the first motion is the -- at Number
8 2 is the Motion of Debtors for Entry of Order Directing
9 Joint Administration of the cases, we'd ask that the relief
10 be granted.

11 THE COURT: Right. Okay. I'll grant this motion.
12 Obviously, there are multiple debtors. The caption says
13 Sears right in the heading so there's no confusion there.
14 So clearly there's a basis to administratively consolidate
15 the debtors.

16 MR. SCHROCK: Thank you, Your Honor.

17 Your Honor, next on the agenda we have the
18 Debtors' Motion For Debtor In Possession Financing. And we
19 did file that motion this morning. And we did receive a
20 couple of comments from the U.S. Trustee that we can walk
21 through with Your Honor. But, you know, suffice to say this
22 motion, we're not seeking approval of the junior debtor in
23 possession financing reference in there, although we believe
24 the company really does need it.

25 This is a motion for the senior debtor in

1 possession financing. There's not a roll-up on day one.
2 There's only a roll-up proposed at the back end. We did
3 everything we could to make it as non-controversial as
4 possible. We believe it's consensual priming that's taking
5 place under the facilities on an interim basis, at least by
6 the required lenders that were present in the negotiations.

7 We have submitted the declarations of Mo Meghji
8 and Brandon Aerbersold about the need for the debtor in
9 possession financing, the cash flows as well as, you know
10 the reasonableness of the fees underlying it. Now we did
11 file a motion to seal a fee -- or redact a fee letter. I
12 have a copy of that fee letter for Your Honor --

13 THE COURT: I've reviewed that.

14 MR. SCHROCK: -- if I could approach.

15 THE COURT: No. I've reviewed it already.

16 MR. SCHROCK: Okay.

17 THE COURT: Someone from your office brought it
18 around earlier today.

19 MR. SCHROCK: All right.

20 THE COURT: I understand the U.S. Trustee has it,
21 too?

22 MAN 1: That is correct, Your Honor.

23 THE COURT: Okay. Before we go further, and this
24 really goes for all of the motions, can you just go through
25 the notice that you gave for today's hearing?

1 MR. SCHROCK: Oh, yes. Sorry, Your Honor. Yes.

2 We did --

3 THE COURT: Obviously, around 100 people got
4 notice because they're in the courtroom, but I just want to
5 get --

6 MR. SCHROCK: Yes. We've been with them all week,
7 Judge. Yes, Your Honor. We did -- let me just get my notes
8 here -- yeah, we did serve the certificate of service
9 serving the top 20 creditors the agenda and the other
10 parties in interest at ECF Number 46. There's also a more
11 substantial notice around some of the pleadings that is at
12 ECF Number 58.

13 THE COURT: Okay. And that went out this morning
14 early?

15 MR. SCHROCK: It went out this morning, Your
16 Honor.

17 THE COURT: Okay.

18 MR. SCHROCK: And I wouldn't say early. It went
19 out this morning. I think we finished filing the pleadings
20 around 9:30. But we have been in very substantial
21 negotiations with many of our creditors. I'd submit that
22 just about every newspaper reported we were filing for
23 Chapter 11 --

24 THE COURT: Right.

25 MR. SCHROCK: -- last night. And they wouldn't be

1 surprised to find us in court here today. And they
2 certainly know where to find us if they had any concerns.

3 THE COURT: Okay. In addition to the people in
4 the courtroom, I have five pages of single-spaced parties
5 who are participating on CourtCall today. So it does appear
6 to be that even though this hearing is in the afternoon of
7 the day that the Debtors filed, there was substantial actual
8 notice of the relief that you're seeking.

9 MR. SCHROCK: Thank you, Your Honor.

10 I get thirsty when I'm a little tired. It's been
11 a long week.

12 So, Your Honor, in terms of the actual debtor in
13 possession financing that's up before the Court, we did
14 begin negotiating with our lenders, you know, over the last
15 ten days. There was certainly a very significant fear, I
16 think, among the company who were working on out-of-court
17 restructuring efforts that once we took that step of
18 actually, you know, negotiating with third parties who are
19 on debtor in possession financing, that the company, you
20 know, would suffer, you know, frankly a crash in trade and
21 that it would leak that that's in fact what the company was
22 doing.

23 And, you know, for what it's worth, that did
24 happen, you know, when we started meeting with parties. I
25 don't think that -- I think everybody there was negotiating

1 very good in good faith. I don't have any reason to believe
2 that there was anybody leaking terms. But that was the
3 reason primarily as laid out in the Aerbersold declaration
4 regarding, you know, why the DIP negotiations took place so
5 close to the petition date.

6 So under those circumstances, you know, meeting
7 with our senior DIP lenders, our existing lenders, you know,
8 a core group that included Citibank, Wells, and led by Bank
9 of America, we're literally there at (indiscernible) offices
10 for, you know, roughly the last better part of a week.
11 We've been negotiating day and night and not just around
12 senior financing, but we also entertained is there any way
13 to do junior debtor in possession financing.

14 We did come around to allowing for a roll-up at
15 the final hearing but only with that winddown reserve where,
16 as referenced in the first day demonstrative on Page 11,
17 that 100 percent of the net proceeds from sales of currently
18 unencumbered assets are swept into the winddown account
19 until it was funded up to \$200 million. There's the
20 interest rate, we thought, was quite, you know, competitive
21 relatively speaking: the LIBOR plus 450, an undrawn
22 commitment fee of 75 basis points, an LC fee of 4 1/2, and a
23 fronting fee of .125 percent.

24 The term loan has an administrative LIBOR plus
25 800. Those will apply to the entire facility once it's

1 rolled up. The fee letter, as Mr. Aerbersold testified,
2 shows fees that he believes were reasonable and within
3 market norms.

4 The U.S. Trustee had a couple of comments to the
5 order itself around the Chapter 7 carveout, moving that from
6 50,000 to 500,000, which the debtors and the lenders had
7 agreed to. The challenge period was moved from the entry of
8 the final order 60 days from entry of the final -- or from
9 the formation of the committee to 60 days from the entry of
10 the final order consistent with the local rules. And we are
11 removing an event of default related to change in venue.
12 The U.S. Trustee asked for that request, and we were okay
13 with that. We have a New York corporation --

14 THE COURT: I was going to ask for that, too, so
15 that's fine.

16 MR. SCHROCK: Yes, Your Honor. Although we
17 weren't going to object to that.

18 I'm happy to answer any questions you have about
19 the financing.

20 THE COURT: Well, let me -- does anyone have
21 anything further to say on the motion for approval?

22 MR. LEHANE: Good, Your Honor. Robert LeHane from
23 Kelley Drye & Warren on behalf of numerous landlords,
24 including Brookfield, Reed US, Inc, which if formerly GGP,
25 LBA Realty Advisors, which is the landlord to five

1 distribution centers in the excess of two million square
2 feet, numerous other landlords.

3 Your Honor, obviously, a difficult day. Just
4 wanted to put to rest any questions Your Honor may have had.
5 I've worked with Mr. Schrock and his team before and many of
6 the lenders. They got it right with respect to all the
7 landlord issues on liens on leases and collateral access.

8 THE COURT: Right.

9 MR. LEHANE: There's no lien on the leases in
10 this. They may seek one in the final. And, certainly, with
11 respect to collateral access, everything is status quo until
12 further order of the Court or a written consent of landlords
13 already in place. We certainly appreciate this. We realize
14 it's a very difficult day and look forward to working with
15 the debtor and all parties in interest to try and help the
16 company get through a reorganization quickly and save jobs.

17 THE COURT: Right. Okay. Yeah, I noticed those
18 provisions and that saved us about half an hour of
19 discussions, so I appreciate that, too.

20 MR. DIETDERICH: Good afternoon, Your Honor. Andy
21 Dietderich, Sullivan & Cromwell, for Fairholme Funds. I'm
22 not exactly sure what the right moment for this is in the
23 proceeding, but I thought I could just speak very briefly
24 about our perspective on the case for no more than a minute
25 or two.

1 THE COURT: Okay.

2 MR. DIETDERICH: It may be relevant to Your
3 Honor's consideration of the DIP. Fairholme is listed as a
4 party in interest. I want to make sure that the Court
5 understands that Fairholme was a mutual fund. It was not
6 involved in negotiations prior to these hearings.
7 Fairholme's no substitute for the creditors committee this
8 case needs.

9 We have reviewed on the way to court today the
10 motions that were proposed, and we have no objection to the
11 relief being requested today. We think a creditor's
12 committee needs to be formed and do its work. I do think
13 it's useful for Your Honor to understand that at least from
14 the perspective of Fairholme, which is a substantial
15 unsecured creditor, holding about \$330 million face in
16 secured bonds, this is not so much a melting ice cube as a
17 puddle.

18 As the first day affidavit says, most of Sears is
19 already gone. Only a few years ago the company had an
20 unencumbered portfolio with some of the best brands in the
21 country and some of the best real estate in the country. It
22 doesn't today. What happened?

23 Unlike most bankruptcies, this one is about the
24 past as much as it's about the future. These cases are the
25 last mile in a multi-year liquidation, one that happened

1 without court supervision.

2 Fairholme is ready to support a fair compromise to
3 the past, but this requires a fair process. Fairholme does
4 not believe the debtors, still under ESL corporate control,
5 should hand-pick who conducts that process, nor should ESL
6 continue to dictate a money-losing business plan for a
7 company that has never shown a potential for profitable
8 operations. We'll be talking to other creditors in the next
9 few days about how to proceed. We're not going to carry the
10 water as Fairholme, but we do look forward to the formation
11 of a fiduciary committee for creditors.

12 THE COURT: Okay.

13 MR. DIETDERICH: Thank you.

14 THE COURT: Okay. That's fine. And I think that
15 highlights, again, one of the reasons that it's important
16 for these debtors to ensure as best they can that they don't
17 become administratively insolvent so that type of review can
18 actually take place in a proper way, whatever that way is.
19 I'm not saying what it is at this point.

20 MR. HUEBNER: Good afternoon, Your Honor. For the
21 record, Marshall Huebner of Davis Polk & Wardwell --

22 THE COURT: Good afternoon.

23 MR. HUEBNER: -- on behalf of Citibank, North
24 America. Your Honor, just for a moment, not to complicate
25 things, but tucked into the DIP order is, of course,

1 adequate protection and other things as well.

2 Just because I know there's a lot to cover today,
3 I did want to note for the Court's benefit there's a \$271
4 million LC facility within the stack of the ABL for which
5 Citibank, as agent -- in an effort to be maximally
6 accommodating to the Debtors, the agent and the lenders
7 thereunder are not asking for a roll-up.

8 It's asking for a very standard package in which
9 essentially the LCs will continue to auto-renew during the
10 case, which is the cheapest and most effective way for the
11 Debtors to maintain the \$271 million of LC capacity.
12 There's an (indiscernible) layered junior adequate
13 protection lien as well as agent fees and expenses. And
14 it's actually, I think, the most elegant way we could find
15 to support the debtor through the LCs that are already
16 outstanding under the facility.

17 THE COURT: Right. Okay.

18 MR. BROMLEY: Good afternoon, Your Honor.

19 THE COURT: Good afternoon.

20 MR. BROMLEY: James Bromley from Cleary Gottlieb
21 on behalf of ESL. I think it's important for us to stand
22 for a moment today to make a couple of statements. First of
23 all, we are 100 percent behind the Debtors and their
24 efforts. We intend to cooperate entirely with the special
25 committee with respect to the requests that have been made

1 for information.

2 It's critical, though, to note that when we're
3 sitting here, there is a process and that process should
4 take place. The Fairholme representatives are people who
5 have been involved in this case. They've served on the
6 direct -- as directors of this Sears, signed off on multiple
7 transactions. All of the transactions that took place here,
8 Your Honor, took place with the strictest of corporate
9 governance oversight. And we look forward to having all of
10 the facts examined and appropriately addressed.

11 THE COURT: Okay.

12 MR. BROMLEY: Thank you, Your Honor.

13 THE COURT: Thanks.

14 MS. KHAN: Good afternoon, Your Honor.

15 THE COURT: Good afternoon.

16 MS. KHAN: Ferve Khan from Baker Hostetler, on
17 behalf of American Greetings. We had filed an objection to
18 the motion to accept (indiscernible) priming lien against
19 our merchandise. In light of Mr. Schrock's representations
20 on the record today that that motion will be handled in the
21 trust account procedures, we'll be resolving that objection
22 consensually.

23 THE COURT: Okay. Very well. Thank you.

24 MR. WIRT: Good afternoon, Your Honor.

25 THE COURT: Good afternoon.

1 MR. WIRT: David Wirt with Locke Lord. We're
2 counsel for Pension Benefit Guaranty Corporation, PBGC for
3 short. I just wanted to note based upon Your Honor about
4 the question about cross-examining witnesses today. We note
5 the interim nature of these orders, and while I have no
6 objection today, would reserve our rights to test the
7 evidence in the future once these orders migrate into a --

8 THE COURT: Sure. Everyone has that right.

9 MR. WIRT: Thank you, Your Honor.

10 THE COURT: Okay. All right. Well, really very
11 little of that was actually about the DIP motion, but that's
12 fine. I appreciate people taking their views. I have to
13 say I had very few comments on the motion or the order. I
14 think that's reflected in some of the things I've already
15 said as far as the treatment of landlords, the preservation
16 of most issues that are potentially problematic until the
17 final hearing, and the like.

18 So I have just a handful of comments that I'm
19 happy to give you.

20 MR. SCHROCK: Certainly.

21 THE COURT: But with those comments properly
22 addressed, I'm prepared to grant the motion on an interim
23 basis. I appreciate that as stated in the Lazard
24 declaration, the DIP loan process, while it may have
25 compressed a lot of time in terms of hours spent, started

1 quite recently. On the other hand, given the capital
2 structure of these Debtors, I agree with the declaration
3 that it's highly unlikely that there would have been a DIP
4 lender there on an interim basis, at least, that would be
5 willing to lend other than on a consensual basis priming
6 itself, which is what we have here.

7 Maybe then -- maybe I'm wrong and in a couple of
8 weeks someone will show up that will surprise us, but I'm
9 comfortable that the process has been at arms-length and in
10 good faith with regard to the --

11 MR. SCHROCK: And we are going to continue to
12 market the loans, Your Honor, post-petition.

13 THE COURT: Right. And that's clearly stated as
14 well and including as part of the process with the
15 contemplated \$300 million junior loan, DIP loan.

16 So as far as comments are concerned, they're
17 pretty minor. On Page 7 in the Debtors' stipulations, the
18 stipulations are all properly qualified by the rights in
19 Paragraphs 40 and 41. But the stipulations in (f) starting
20 on Page 12 going through (k) on 16 -- actually (l), excuse
21 me -- (l), all deal with the second liens. And the
22 Paragraphs 40 and 41 properly just set a deadline for
23 objecting to the ABL. So really there's no -- there's other
24 cases -- well, shouldn't really be covered here. They could
25 be Debtors' assertions, but they shouldn't be wrapped into

1 the mechanism of a fish-or-cut-bait format.

2 MR. SCHROCK: Obviously, we're fine with that,
3 Your Honor.

4 THE COURT: Okay.

5 MR. SCHROCK: We'll just remove those.

6 THE COURT: Okay. And then on Page 6, it has --
7 well, maybe I missed something here. I'm just focusing on
8 the introduction now, but let me just look at one point
9 here.

10 MR. DIETDERICH: Your Honor, I need to make one
11 question, one other question.

12 THE COURT: Right.

13 MR. DIETDERICH: Sorry. It's a question for the
14 Debtor just clarification.

15 THE COURT: Could you just state your name for the
16 record again?

17 MR. DIETDERICH: Sure. Andy Dietderich, Sullivan
18 & Cromwell. Your Honor, we would be concerned, we might ask
19 for clarification from the Debtor to make sure that none of
20 the debt held directly or indirectly by the ESL
21 (indiscernible) stipulations (indiscernible).

22 MR. SCHROCK: But certainly the intent that --

23 THE COURT: You know, there's a footnote that says
24 that I believe.

25 MR. SCHROCK: Yeah. There was a lot of paper and

1 (indiscernible). Thank you.

2 THE COURT: Okay. Yes, on Paragraph 6, Page 29,
3 there's an authorization to pay certain sums, including fees
4 to the DIP lenders. It's qualified a little bit in
5 paragraph E on Page 45 as far as the mechanism for reviewing
6 the reasonableness, so maybe in addition to saying subject
7 to Paragraph 19, you could say and 18E at the intro to that.

8 And then in Paragraph 12 on Page 32, the DIP ABL
9 collateral basically extends to everything with the carve
10 outs and other exceptions including the wind down account.
11 In the last sentence of that paragraph says, "In the
12 proposed final order, the Debtors will request that all of
13 the proceeds of avoidance actions also go to secure the
14 claim."

15 But it's not carved out before that, so I think
16 you need to carve it out on Page 32, you know, avoidance
17 actions and the proceeds thereof.

18 MAN 1: Will do, Your Honor.

19 THE COURT: Okay. And then we talked about the
20 venue point. On Page 76, this is the list of defaults, I
21 didn't understand D. It says, "To pay any fees or similar
22 amounts, like a topping fee, without prior consent of the
23 ABL agents...", in most of the other provisions you say
24 except as approved by the Court. To me this gives the ABL
25 agents, without having that language there, it gives the ABL

1 agents leverage over a sale, particularly when they are
2 given the right to credit bid. It didn't seem to work
3 there. I think it should have except as approved by the
4 Court.

5 I understand it would be an event of default if
6 the Debtor paid something out of the ordinary course that
7 wasn't Court approved, but if I approved it with obviously
8 on notice to everyone, I don't think that it should be an
9 event of default if the lenders disagree with that.

10 And then in F it says, "To use or seek to use cash
11 collateral while the DIP obligations are outstanding...". I
12 can see a motion saying we'll pay them off with the
13 replacement facility, that shouldn't be the basis for an
14 event of default. So, "seek to use". I think it should --
15 maybe I'm just not reading this right, but I think it's to
16 use or seek to use unless the motion to seek to use provides
17 for payment of the facility.

18 MAN 1: I understand the point, Your Honor. If
19 we're going to pay them off...

20 THE COURT: Right. Making the motion to pay them
21 off shouldn't be an event of default.

22 MR. SCHROCK: Yes, I think that should be fine.

23 THE COURT: Okay. And then on the challenge
24 period point, I certainly agree with the U.S. Trustee's
25 point that you've adopted. I think as a practical matter

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1 this is not going to be the case in this case. If you look
2 at 78(d) it says that, "Unless there's a challenge, the pre-
3 petition ABL obligations shall constitute allowed claims not
4 subject to counter-claims, setoffs, subordination
5 recharacterization, reduction, defense or avoidance."

6 Well, under 506(a) you could reduce based on the
7 value of the collateral and that's not really covered by a
8 challenge. I normally require, you know, except as provided
9 based on valuation of the collateral under 506(a) to be
10 inserted in language like that. It's probably a non-issue
11 here.

12 MR. SCHROCK: Sounds good.

13 THE COURT: And then the last point I have is
14 really a minor one and it goes for a lot of these where
15 there's a notice of final hearing paragraph, Page 87
16 Paragraph 56. Just as a preview, I'm likely to grant the
17 case management order so I think it should just say the
18 notice will be done as per the case management order so
19 there's no conflict there.

20 But with those really relatively minor changes I'm
21 prepared to approve this and enter the interim order that
22 I've gone through.

23 MR. SCHROCK: Thank you, Your Honor. May I have
24 just one moment?

25 THE COURT: Yes.

1 MR. SCHROCK: Your Honor, we're just discussing
2 one point on Page 67 Paragraph D regarding the Debtors'
3 right to use cash collateral.

4 THE COURT: That's fine.

5 MR. SCHROCK: Just a moment. Sorry, Judge. So,
6 Your Honor, in Paragraph D Page 67, we just want to add the
7 proviso "or for the contested use of cash collateral". I
8 think that this is just going to be an issue that the entry
9 of the final order we'll just have to work with the lenders
10 on -- you know, we can waive those rights.

11 THE COURT: Okay. Well, again, you can use cash
12 collateral if the motion says that you're paying it off.

13 MR. SCHROCK: Yes.

14 THE COURT: Okay.

15 MR. SCHROCK: Okay. Thank you, Your Honor.

16 THE COURT: Okay.

17 MR. SCHROCK: With that, Your Honor, I'm happy to
18 make your changes and I'll turn to the podium over to Mr.
19 Singh.

20 THE COURT: So, with this order and all the other
21 ones you could send me the blackline pages and the final
22 version of the order. Hopefully they'll get entered today,
23 but people can act in reliance on them because literally I
24 have no other changes to the order than the ones I laid out
25 on the record and that you laid out in light of your

1 agreement with the U.S. Trustee.

2 MR. SCHROCK: Thanks very much, Your Honor, and
3 just really quickly before I sit down, regarding the
4 comments of Mr. Dietderich, suffice it to say that the
5 Debtors have their own views on those issues. They weren't
6 relevant to cash collateral. I'm not going to get into them
7 today, but I think that's for another day.

8 THE COURT: I agree.

9 MR. SCHROCK: Okay. Thank you, Your Honor.

10 MR. SINGH: Good afternoon, Your Honor. Sunny
11 Singh, Weil Gotshal on behalf of Sears, Your Honor.

12 THE COURT: Afternoon.

13 MR. SINGH: Very long couple of days. I believe
14 I'm in the right courtroom at the right time.

15 Judge, one thing I would just mention on the
16 interim DIP order there were also some other clarification
17 type changes where we added on areas where there's no
18 release or bar with respect to investigation of ESL. We
19 worked that out with counsel for the DIP lenders. We'll
20 have those changes in the redline that we send out to you as
21 well as a reservation of rights that was provided by Chubb
22 Insurance with respect to LCs that they have, effectively
23 that we're not priming any LCs that they're holding onto.

24 THE COURT: Right. This is consensual priming
25 only as I understand it.

1 MR. SINGH: That's right, Judge, and that property
2 is sitting with them.

3 THE COURT: And as far as anyone that arguably in
4 American Greetings' position, you can't grant a lien on
5 something you don't own. I don't think the Debtors are
6 pulling any fast ones today.

7 MR. SINGH: Exactly, Judge. We agreed to add the
8 language and counsel for the DIP lenders is okay with it as
9 well.

10 THE COURT: Okay.

11 MR. SINGH: Judge, if I could just talk scheduling
12 for one second, it will just be relevant because we do have
13 on the agenda today, as Mr. Schrock mentioned, some real
14 estate motions that are not going forward today -- that's
15 the GOB procedures as well as the lease rejection procedures
16 at the omnibus lease rejection with respect to the dark
17 stores.

18 So, we are working on a date with your chambers to
19 try and get back early next on just the GOB procedures
20 motion. But, Your Honor, we do have I believe you are
21 available and so we can start collecting these dates into
22 some of the proposed orders, Thursday November 1st at 2:00
23 PM with respect to the junior DIP financing piece and then
24 Thursday November 15th at 10:00 a.m. as to the second day
25 hearing.

1 THE COURT: Okay. If that's what Miss Lee told
2 you, she knows better than I do.

3 MR. SINGH: And I think that all fits within the
4 milestones that, Your Honor, set out.

5 THE COURT: Okay.

6 MR. SINGH: Your Honor, going to cash management
7 next, it's a pretty typical cash management system that
8 Sears operates under; three tiers, collection, concentration
9 and payment through zero balance accounts. We've got 154
10 accounts that are mostly with Bank of America. There are a
11 few accounts that are not on the U.S. Trustee's list, but
12 they are less than \$250,000 typically held in those
13 accounts.

14 Your Honor, I would note with respect to the
15 intercompany transactions, Mr. Schrock summarized them for
16 you earlier as to the KCD notes and Sears Re, so we're not
17 seeking any relief with respect to those types of
18 transactions in the cash collateral motion.

19 Although we are going to continue the warranty
20 arrangement of course with Sears Re so there's no disruption
21 to that part of the business. But there are some
22 transactions that we do seek authority for in an
23 intercompany scope.

24 As to Debtors in the ordinary course of business
25 we'll obviously record administrative expense claims and

1 monitor those. But as to non-Debtor foreign affiliates, and
2 in particularly, Your Honor, we have three -- Hong Kong,
3 India and Israel, where we really have back office and
4 support services that are being provided by those foreign
5 entities and so amounts are effectively being paid really
6 only to make payroll there. If we didn't make payroll there
7 we'd have to outsource for these services which are call
8 centers, certain sourcing and IT support.

9 THE COURT: So they're still needed.

10 MR. SINGH: Yes, we absolutely need it. They are
11 providing the service. We do have some controlled mechanics
12 and we did, based upon how much we spend on a regular basis,
13 propose a cap, Your Honor, of \$5 million per month per
14 million. But we do need that ability to continue to operate
15 the business.

16 THE COURT: Okay. And then on Sears Re, Mr.
17 Schrock did explain --

18 MR. SINGH: That's right. We'll have to come
19 back.

20 THE COURT: Unless there's some solution to the
21 flow of funds, it's going to stop it.

22 MR. SINGH: That's right. We'll have to come back
23 to you on that one as well as the KCD notes.

24 Your Honor, the other relief in the cash
25 management motion relates to chargebacks and our credit card

1 processors. We've got a number of them, Your Honor, and
2 basically whenever credit card charges are made, and there
3 are tons through the Sears stores, these entities, whether
4 it's credit card company directly like with AmEx, First Data
5 who is a processor, handles all of these sort of cash flow
6 ins and outs and net settles on effectively a daily basis.
7 It may not happen exactly on a daily basis, but effectively
8 on a daily basis, so we need those arrangements to continue
9 in accordance with their terms, Your Honor.

10 We believe those parties are protected anyway with
11 the set off and/or (indiscernible) rights. So, in order for
12 the ordinary course operation in the business we've sought
13 (indiscernible) continue this.

14 THE COURT: Right, which really is ordinary
15 course.

16 MR. SINGH: Absolutely, Judge. I think that
17 summarizes the cash management motion unless you have any
18 questions.

19 THE COURT: Okay. Does the U.S. Trustee have any
20 position on this relief?

21 MR. SCHWARTZBERG: Paul Schwartzberg from the U.S.
22 Trustee's Office, Your Honor. No, Your Honor.

23 THE COURT: Okay. All right. I've reviewed the
24 motion and my only questions about it have been answered
25 and, given that, I'll grant it on an interim basis. It's

1 really in the Debtors' interest. It needs the relief and in
2 some respects it probably doesn't need an order, to make
3 these changes to the cause to what would otherwise be
4 required under the Bankruptcy Rules.

5 MR. SINGH: Thank you, Judge. Your Honor, next
6 just quickly I'll handle the case management procedures. I
7 think they are in line with the procedures Your Honor has
8 entered in other cases and unless you have any questions,
9 we'd ask that it be entered.

10 THE COURT: Well, I think there -- unfortunately,
11 I think you're going to have to make a few changes here.
12 First on Page 3, where it says filing of documents. We're
13 going to something called NextGen, and there's actually
14 little pamphlets outside my Courtroom on it.

15 So I think the best thing to do here is to check
16 with the Clerk's Office. But I think Paragraph 4, you're
17 going to have to revise. Maybe you should make a reference
18 in that paragraph to Local Rule 5005-2, instead of General
19 Order 399, but I'm not sure. I think I had this right, that
20 you're just supposed to use PDF's and not Word or Windows-
21 based documents when you file.

22 MR. SCHROCK: Okay. We'll check and make the
23 changes.

24 THE COURT: Okay. And then on Paragraph 9, I'm
25 not sure why there's a distinction between the Debtors and

1 the Committee on one hand and other parts on the other, as
2 far as service is concerned. I think I'd rather just have
3 it as you provide for everyone else, unless there's some
4 reason why those two should be different. And encouraging,
5 obviously, email service.

6 On Page 21, I have my own procedures for pretrial
7 orders that are on the website. And this kind of adopts
8 them, but kind of doesn't, as far as the parties can set a
9 briefing schedule and then just submit an order. I'd rather
10 they just follow the procedures on the website.

11 And similarly, for Paragraph 28 and Paragraph 36,
12 these are paragraphs that deal with notices of presentment
13 and submitting orders where there's a certification of no
14 objection. And I have a procedure where I require you, when
15 you submit that by email to chambers, you need to submit the
16 underlying motion papers and the certificate of service, so
17 we don't have to go through trolling through the docket to
18 find them because I read them.

19 And similarly, on 42 where it refers to discovery
20 disputes. Before, as you say, before people contact
21 chambers, they should do their best to resolve the dispute.
22 But I'd prefer it to have -- if you can't resolve it, to
23 have the parties email chambers with a brief letter
24 explaining the dispute and requesting a call to be set up.

25 And then lastly, Paragraph 47 deals with arranging

1 telephonic appearances. And I, along with Judge Chapman,
2 are conducting an experiment to use a company called Court
3 Solutions. Many of you on the phone reached out to Court
4 Solutions because you know that, but we're in a different
5 Courtroom. This is a jury assembly room, and I use it for
6 my large Chapter 13 docket for large hearings. They're only
7 set up for Court Call, so that's why the people on the phone
8 got a notice saying we're not going to -- from Court
9 Solution saying we're not handling your call today, reach
10 out to Court Call.

11 I don't know how you're going to -- I think most
12 of the hearings will be in the other, my regular Courtroom.
13 So I think you should probably modify this to say contact
14 Court Solutions. The good thing about Court Solutions is,
15 you don't have to contact chambers. You can just do it
16 through them, so the people in the Clerk's Office don't have
17 to field 20 or 30 calls.

18 MR. SCHROCK: Okay, we'll make that change.

19 THE COURT: Then I suppose, if we're back in here
20 for something, we'll do that on an ad hoc basis. Like
21 today, Court Solutions will notify people that they need to
22 make some other arrangement.

23 MR. SCHROCK: Okay.

24 THE COURT: But I think you have someone behind
25 you that wants to say something on this motion.

1 MR. GADSDEN: Very briefly, Your Honor. James
2 Gadsden, Carter Ledyard & Milburn, for Bank New York Mellon,
3 Trust Company and as Trustee. Since we're getting an order
4 in making notice provisions, I've given Mr. Singh my firm's
5 notice detailed for use for the Bank New York Mellon.

6 THE COURT: Okay, all right. I sometimes do these
7 procedures after a committee is formed, so that other people
8 can look at them. But there's a paragraph in here that says
9 that these can be changed on notice, so that could still
10 happen. If I miss something, if someone feels that there's
11 some procedural disadvantages in this order, they can
12 request that it be amended.

13 MR. SCHROCK: Okay, Your Honor.

14 THE COURT: So with those changes, I'll approve
15 it.

16 MR. SCHROCK: We'll make amendments right away.
17 Your Honor, I'm going to turn the podium over to my
18 colleague, Jessica Liou.

19 THE COURT: Okay.

20 MS. LIOU: Good afternoon, Your Honor.

21 THE COURT: Afternoon.

22 MS. LIOU: Jessica Liou from Weil, Gotshal &
23 Manges, counsel for Sears Holding Corporation and its
24 affiliated Debtors. I've got three matters before you, all
25 routine, but very important motions to the Debtors.

1 The first one is agenda item no. 6 is the Debtors'
2 motion to pay employee wages and honor employee obligations,
3 benefits and continue existing benefit program.

4 As you know, the Debtors have a very large
5 workforce and that workforce is incredibly important to a
6 retailer like Sears. And in addition to the 68,000
7 employees that they have, they also have a supplemental
8 workforce they're paying for.

9 We are seeking to pay all outstanding accrued
10 prepetition wages and other obligations related to the
11 ongoing program. But there are a few things that I would
12 like to note: the first thing is that we are not seeking to
13 pay any specific employee or member in the supplemental
14 workforce above the priority wage that we spoke of.

15 THE COURT: And that's in the aggregate, whether
16 it's wages or accrued vacation.

17 MS. LIOU: That's correct.

18 THE COURT: Okay.

19 MS. LIOU: And the second item I'd like to note is
20 that our motion describes two incentive plans that the
21 Debtors have and continue to support the proceeding to
22 continue in the ordinary course.

23 The U.S. Trustee has raised some questions with
24 respect to those programs and would like to learn more about
25 them. So we have agreed with the U.S. Trustee that, at

1 least with respect to an interim order and on an interim
2 basis, they're not seeking any emergency meeting with
3 respect to those two bonus programs. We don't believe that
4 there are going to be any amounts due and owing under the
5 bonus programs anyway.

6 THE COURT: Over the next couple of weeks.

7 MS. LIOU: Exactly, over the next couple of weeks.

8 THE COURT: Okay.

9 MS. LIOU: Most of the payments will be made on an
10 annual basis, although some will be quarterly, but not due
11 over the next several weeks.

12 The third item I'd like to note is that we did
13 also provide disclosure in our motion about the post-
14 petition severance program that the Debtors would like to
15 continue in the ordinary course.

16 And as my colleague, Mr. Schrock, mentioned, it is
17 incredibly important to the Debtors to be able to operate
18 and show their workforce that they're incredibly important,
19 especially during this critical time where we've got 142
20 stores that are going dark and we're going to need employees
21 around to continue to sell our inventory.

22 And so, we believe in ordinary course, we would
23 like it to go forward. The U.S. Trustee has indicated some
24 concerns with having the severance program continue during
25 this interim period, but we are requesting that it continue.

1 We also note that in the motion, and we can
2 include language to this effect in the order as well, but we
3 are not seeking to make any payments that would violate
4 Section 503(c) with acceptable severance.

5 THE COURT: As far as insiders are concerned.

6 MS. LIOU: Correct.

7 THE COURT: Okay, all right. Did that resolve the
8 U.S. Trustee's issue?

9 MS. LIOU: No, it did not.

10 THE COURT: Okay, all right. So in terms of the
11 projected cash payments, this contemplates -- obviously,
12 some of these are estimates.

13 MS. LIOU: Correct.

14 THE COURT: \$107,600,000?

15 MS. LIOU: Yes, that's right for the interim
16 period.

17 THE COURT: Okay. And that's, that number is
18 consistent with the DIP loan and the budget and they all
19 sync together?

20 MS. LIOU: I believe it is.

21 MR. SCHROCK: Yes, it is.

22 THE COURT: Okay, all right. Okay. All right,
23 well, did anyone have anything to say on this motion?

24 MR. SCHWARTZBERG: Your Honor, Paul Schwartzberg
25 with the U.S. Trustee's Office. I'd like to thank the

1 Debtor for putting off the incentive portion of the motion
2 at our request. You know, that just left the severance
3 part. As per the motion, nothing is actually due today.
4 They (indiscernible) prepetition (indiscernible) due because
5 it's made on an emergency basis, we didn't see the need for
6 it to be done today and to be put off.

7 Exactly our and the Debtors' concept of
8 (indiscernible) may or may not entirely differ. And so, we
9 thought it should be put off until there's a little more
10 disclosure regarding who's actually getting severance or may
11 get severance. And it doesn't need to be done today, for
12 the reason there's no emergency.

13 THE COURT: Okay. Does anyone else have anything
14 to say on this motion? On that point, I think, particularly
15 given the case law in the Second Circuit, by authorizing the
16 Debtors to make a payment in respect to severance, I'm not
17 really doing anything other than saying pay an
18 administrative expense, unless, of course, someone is an
19 insider.

20 And, I mean, this is post-petition severance we're
21 talking about here?

22 MS. LIOU: That's correct.

23 THE COURT: And as far as insiders are concerned,
24 I believe that based on my review of the motion, there is a
25 -- just as with the critical vendor motion, there's a

1 sophisticated team that's in charge of this process, and
2 that the Debtors would be careful not to pay -- make a
3 payment on an interim basis that would even arguably violate
4 503(c). So with that bit of warning, I'll grant the motion.

5 MR. SCHWARTZBERG: Your Honor, there's language in
6 the motion that talks about how they're not going to make
7 any payments in violation of 503(c).

8 THE COURT: Right.

9 MR. SCHWARTZBERG: I would ask that the Debtor
10 could track that language into the order.

11 THE COURT: No, I think counsel said that they
12 would.

13 MR. SCHWARTZBERG: Thank you, Your Honor.

14 THE COURT: Okay.

15 MS. LIOU: Thank you, Your Honor.

16 THE COURT: But clearly, as with most, although
17 not all, businesses, the employees are critical to the
18 continued operation of the business, even where they may be
19 employees in stores that are slated to be closed. So it
20 appears clear to me that these payments will provide a net
21 benefit to the Debtors' estates, after taking into account
22 the priority scheme of the Bankruptcy Code.

23 There may be some admin and creditors that are
24 ahead of the, you know, the \$12,000 priority, but those
25 creditors aren't likely to get the type of assurance that

1 they'll get to get paid unless the employees are paid.

2 So I view this as basically, these types of
3 motions as motions for approval out of the ordinary course
4 of a transaction under 363(b). There's clearly a legitimate
5 and good business reason to make these payments. It's being
6 made out of collateral for the DIP lenders and the secured
7 lenders who are fully aware of this and have budgeted for
8 it. So for all those reasons, I'll grant the motion, as
9 slightly revised as you said on the record.

10 MS. LIOU: Thank you very much.

11 THE COURT: Okay.

12 MS. LIOU: I think that brings us to the next item
13 on the agenda, item no. 7. That's Debtors' motion seeking
14 to pay certain taxes, prepetition taxes and fees, including
15 sales and use, franchise, income, real estate, and other
16 types of licensing miscellaneous.

17 Your Honor, this is a pretty routine motion,
18 payment of taxes are pretty important. Failure to pay these
19 taxes will subject the Debtors to potential secured claims,
20 liens and fines, interruptions to its business, and also a
21 portion of the taxes themselves (indiscernible) property of
22 the Debtors' estate because they are trust fund taxes.

23 THE COURT: Right.

24 MS. LIOU: So with that, we ask for [OFF MIC]
25 grant the motion.

1 THE COURT: Okay. And, again, this is -- these
2 payments are subsumed within the DIP budget?

3 MS. LIOU: Correct.

4 THE COURT: Right, okay. Does anyone have
5 anything to say on this motion? All right. Most of these
6 taxes, it's really a no-brainer that they need to be paid.
7 Many of them are pass throughs for the landlords. Others,
8 as you say, are trust fund taxes, or necessary for the
9 Debtors to continue to operate various segments of their
10 business, like, for licensing, for example.

11 And to the extent that they're not, they would be
12 priority claims; and if not paid, would leave to either, as
13 you say, liens or penalties or both. So I'll grant the
14 motion and authorize the payment.

15 MS. LIOU: Thank you, Your Honor. Next is the
16 Debtors' motion seeking to continue their insurance and
17 workers' compensation programs, and also to pay certain
18 prepetition amounts due with respect to their insurance
19 policies and also workers' compensation program. That
20 agenda item no. 8.

21 THE COURT: Right.

22 MS. LIOU: And just to clarify, with respect to
23 the motion itself. The Debtors believe that during the
24 interim period, there will only be, you know, various
25 premium financing amounts that will come due that relate to

1 the prepetition period, and that's a small amount, probably
2 about \$850,000.

3 And then there is an expected amount that would
4 come due in the interim period related to potential workers'
5 compensation obligations, including potential settlements of
6 claims that arose prepetition, and that would be an
7 estimated \$3 million.

8 So it's the \$3 million, plus the \$850 that we're
9 seeking authority to pay in the interim.

10 THE COURT: Right. And the workers' comp is
11 partly done by insurance and partly self-financed, in
12 essence?

13 MS. LIOU: That's right.

14 THE COURT: Okay, all right. Does anyone have
15 anything to say on this motion? You didn't attach the
16 actual premium financing arrangements, but I'm assuming that
17 the only lien that the finance lender has is on the policy
18 and the unpaid -- the proceeds for the unpaid premiums,
19 right? There's no other lien that they get.

20 MS. LIOU: I'd have to verify that.

21 THE COURT: Okay. I mean, that's typically how
22 they work. I just want to make -- if they -- I'm assuming
23 that's the case. If it's not, then we'll deal with it at
24 the final hearing. The DIP lenders will probably check that
25 too. But having said that, I'll grant the motion.

1 MS. LIOU: Thank you, Your Honor. With that, I'll
2 cede the podium to my colleague, Jacqueline Marcus.

3 MS. MARCUS: Good afternoon, Your Honor.

4 Jacqueline Marcus, Weil Gotshal & Manges, on behalf of the
5 Sears Holding Corporation and its affiliated Debtors.

6 Your Honor, no. 9 on the agenda today is the
7 Debtors' critical vendors motion.

8 THE COURT: Right.

9 MS. MARCUS: Pursuant to this motion, the Debtors
10 seek interim and final orders authorizing to implement a
11 critical vendor protocol, and in connection they were to pay
12 prepetition claims of critical vendors up to an aggregate of
13 \$70 million on an interim basis and \$90 million on a final
14 basis.

15 As Your Honor is aware, this type of relief has
16 become fairly standard, particularly in retail cases, so the
17 Debtors can ensure their businesses will continue to operate
18 without too much disruption of (indiscernible).

19 The motion describes the factors that the Debtors
20 and their advisors considered in determining, or will
21 consider in determining which vendors are critical,
22 including whether the claims of the vendor would otherwise
23 be entitled to Section 503(b) status.

24 In addition, the motion describes the procedures,
25 and importantly, the internal controls that will be applied

1 with respect to paying critical vendors. And I think Your
2 Honor gave me a little bit of a hint a few minutes ago about
3 a time you would use other protocol. The protocol, Your
4 Honor, is the same as we previously applied in both the
5 (indiscernible) cases.

6 The Debtors will try to get vendors to enter into
7 vendor agreements, which will require the vendors to provide
8 trade terms similar to those that were in effect prior to
9 the commencement date. Any payments in excess of \$500,000
10 to a particular vendor would require the approval of the
11 Debtors' CRO or CFO. The Debtors intend to maintain
12 critical vendor matrix -- matrix, excuse me -- that will
13 track all payments.

14 Importantly, the critical vendor motion also
15 contemplate that the Debtors will exercise their rights
16 under the Bankruptcy Code to compel vendors with whom they
17 have executory contracts to continue to perform on a post-
18 petition basis pending the Debtors' attorneys whether to
19 assume or reject those executory contracts.

20 To that end, the motion sets forth certain
21 procedures for redress in the Court in the event there are
22 any, what we call, reputiating vendors who refuse to comply
23 with their obligations.

24 In short, Your Honor, Debtors believe that the
25 critical vendor protocol outlined in the motion provide the

1 Debtors, as well as their critical vendors, with procedures
2 that will enable the Debtors to obtain merchandise that is
3 critical to their ongoing operations, providing the Debtors
4 with the flexibility to do that which is necessary, while at
5 the same time giving due regard to the interest of other
6 creditors.

7 I anticipate your question regarding the DIP
8 financing. Yes, these amounts are in the DIP budget; and,
9 in fact, I think every single one of our first day orders
10 has a provision that says it must keep revising with the DIP
11 financing.

12 THE COURT: Okay.

13 MS. MARCUS: Your Honor, the U.S. Trustee's
14 Office, Mr. Schwartzberg did indicate that they have
15 concerns with the critical vendor motion. Would you prefer
16 that to be heard now?

17 THE COURT: Okay.

18 MR. SCHWARTZBERG: I noticed there's someone else
19 standing up. I didn't know (indiscernible).

20 Your Honor, there were two concerns the U.S.
21 Trustee has on the motion. First, as Debtor had says, \$70
22 million is a (indiscernible) to go on this. But the money
23 isn't going to go out today, it's not going to go out
24 tomorrow, we're setting up the procedure. So the U.S.
25 Trustee would like to have this put off, to have a committee

1 perhaps, look and determine whether they agree with the
2 procedure, and have the Debtors have a say in that since
3 it's not an emergency.

4 Second, under the critical vendor motion should be
5 (indiscernible) necessity. This procedure puts that, the
6 decision of who makes the critical vendor list on the
7 Debtors, whether it should be something the Court determines
8 and should provide the Court and the U.S. Trustee and
9 perhaps the committee before the money goes out a list of
10 who is to get paid. And it's a question that I think should
11 be raised before the Court so the Court makes the
12 determination.

13 THE COURT: Well, on the first part, I didn't
14 understand, maybe I just misread the motion. I thought that
15 they were contemplating making these payments right away if
16 someone truly is critical.

17 MR. SCHWARTZBERG: I believe they have to send out
18 a notice, and if the vendors ask for a committee to be set
19 up, and then they committee makes the determination.

20 THE COURT: Well, I mean, they've already served
21 it. It's already on the docket. I'm assuming that if
22 there's a critical vendor, they've already seen it, they're
23 going to send in the notice right away. Let me ask it a
24 little differently. When are you contemplating having the
25 unsecured creditors committee formation meeting?

1 MR. SCHWARTZBERG: Well, it depends. We slated it
2 for October 24th. We are waiting for the Debtors to avail
3 themselves -- or obtain a space that we can have it. We
4 can't have it in our 341 room; it's not large enough, I
5 don't think, to accommodate the crowd. So if the Debtor is
6 able to get a space by October 24th, once that space is
7 provided, the name is provided to us, we have slotted into
8 the notice and we can send that out ASAP.

15 THE COURT: Okay.

16 MR. SCHWARTZBERG: So it would be Wednesday.

17 THE COURT: So we're talking 9 or 10 days.

18 MR. SCHWARTZBERG: Yes, Your Honor.

19 THE COURT: All right. I know there are different
20 models for doing the analysis for these types of programs.
21 But I guess I take much more comfort in making sure that the
22 people that are making the decisions follow the right
23 protocols, rather than making them, to me, in a public
24 context.

25 It's not like a sale of a major asset. You're

1 basically put in -- the alternative is to put on the record,
2 you know, who's really important and who isn't. And, to me,
3 that can be very destructive of a business. As opposed to
4 relying on capable objective people who've done this before
5 and who work closely with the operations people who've never
6 done it to, you know, winnow down the list as to being as
7 small as you can.

8 So I just think process is more important than
9 having, in this type of motion, having a public airing of
10 it, including with the people who are on the committee as
11 opposed to committee professionals. It just seems to me
12 that there are problems with either approach. But if you're
13 going to look at it as a practical matter, you really need
14 to have the trust that the professionals that handle this
15 are going to be on top of it.

16 And certainly, as this is laid out in this motion,
17 that's what -- they're doing -- put it differently. They're
18 asking the questions that I would ask at a hearing with
19 regard to each one of these.

20 If you look at Paragraphs 19 through 23, these are
21 exactly the questions I would ask. And I think it's -- I
22 mean, it's followed up by a report. They know it's going to
23 be reported to the committee counsel and the committee
24 professionals. So if they screw up, there'll be
25 consequences, but these are the very things that you ask,

1 and some of these are clearly judgment calls.

2 You know, Harvey Miller was one of the most
3 aggressive people on this ever and saying I'm not going to
4 pay anything we have to, you know, we have contracts with
5 movie studios and they can't pull films from our
6 distributor. And that was all well and good until the
7 studios started sending doo-dos to, "Oh, My Car" instead
8 of, you know, "A Star is Born." So there are judgment calls
9 involved, but I'd rather leave it up to the professionals
10 than those.

11 MR. SCHWARTZBERG: Thank you, Your Honor.

12 THE COURT: Okay.

13 MR. SCHWARTZBERG: And one thing I would urge the
14 Debtor (indiscernible).

15 THE COURT: Well, I think -- no, I think in the
16 order, you and the committee professionals.

17 MR. SCHWARTZBERG: I was asking to back to the
18 committee formation.

19 THE COURT: Oh, on the emails and the -- yes,
20 yeah. Yeah, that's going to come up later. I thought the
21 20 was a little short too, as opposed to 40.

22 MR. SCHWARTZBERG: Thank you, Your Honor.

23 THE COURT: Okay. Did you have something to say
24 on this, sir?

25 MR. FOX: Yes, Your Honor. Good afternoon. My

1 name is Greg Fox, Goodwin Procter, on behalf of Waste
2 Management International Services.

3 THE COURT: All right.

4 MR. FOX: I believe we're known as a critical
5 vendor. I just rise to preview an important time sensitive
6 issue that my client is facing. My client provides waste
7 and recycle services at all of the Sears and Kmart stores.
8 It's one of the Debtors' largest prepetition unsecured
9 creditors. It's owed approximately \$4.8 million in invoiced
10 and unbilled amounts; over \$1 million of that is past due
11 and prior to petition date, September 28th and October 8th.
12 My client sent notice of termination for vendor
13 (indiscernible) services agreement to the parties.

14 And I'm here today just to preview an issue. That
15 is, that every time Sears or Kmart liquidates one of these
16 stores, they request of my client a lot of extra services --
17 more frequent pickups, additional clean dumpsters -- and
18 that raises the invoices that my client incurs my
19 approximately \$80,000, depending on the size of the store.
20 And if you multiply that by 140 stores that they're talking
21 about today, that's over \$1 million.

22 And under the NSA that the parties are a party to,
23 subject to the termination notices, my client bills in
24 arrears and is getting paid on 45-day terms. So by the time
25 my client is paid for these services, between 75 and 90 days

1 may have gone by.

2 And we just don't know where this case is going to
3 be in 90 days, so I just wanted to preview to the Court and
4 the parties in the Courtroom that in the next 24 hours or
5 so, we'll be filing a motion for next day seeking adequate
6 protection, adequate assurances, and critical vendor status
7 to ensure that, you know, any liquidations of stores,
8 including these 140 stores they're talking about today, are
9 not financed by Waste Management.

10 THE COURT: Okay, that's fine. But, again, I
11 gather your client has a long-term contract with the
12 Debtors?

13 MR. FOX: Which we terminated prior to the
14 bankruptcy.

15 THE COURT: Okay. Well, I guess they'll be
16 looking at that closely.

17 MR. FOX: They believe, and whether, though, these
18 extra services are required to be provided under that
19 contract.

20 THE COURT: But, again, one of the points Mr.
21 Schrock made is that up to \$200 million of the sale proceeds
22 go into the winddown accounts. So it's intended, I believe,
23 to protect people like your client.

24 MR. FOX: Understood, Your Honor.

25 THE COURT: Okay.

1 MR. FOX: And we've all been (indiscernible).

2 THE COURT: I appreciate that.

3 MR. FOX: I appear today just to introduce
4 yourself and the issue. And I rose now just because it
5 wasn't clear when the appropriate time because they haven't
6 filed a utility motion and apparently, the going out of
7 business hearing will be sometime next week. So I would
8 request that we be in contact with chambers in terms of our
9 motion.

10 THE COURT: Well, there's the -- look at the case
11 management order.

12 MR. FOX: Okay. Thank you, Your Honor.

13 Just in terms of urgency and timing on just
14 closing the loop on the critical vendor motion, the Debtors
15 have already established a task in their headquarters of
16 people that are working on this initiative, and we have
17 already gotten numerous communications from vendors who seem
18 to be treated as critical vendors.

19 So, we appreciate Your Honor's decision,
20 hopefully, to enter the interim order today so that we don't
21 have to keep people waiting and we can take care of this
22 very -- I hate to use the word critical again, but critical
23 initiative.

24 THE COURT: Okay. All right, I will grant the
25 motion on an interim basis. I think the Debtors fully

1 understand this isn't a license to willy-nilly pay
2 prepetition debt, then that they will instead go through the
3 procedures that they outlined in the motion, particularly in
4 the paragraphs that I mentioned.

5 Again, as with the employee order, I believe,
6 based on the record before me at least, that these payments
7 are what's almost by definition necessary, and providing
8 that benefit to the Debtors' estates, after taking into
9 account Bankruptcy Code's priority scheme, so that a vendor
10 that might have an unsecured claim, nevertheless is so
11 important to the Debtors' operations, or so outside of my
12 practical power, i.e. and foreign vendor that doesn't have
13 any real assets here, that they are critical. And that the
14 cost of making the payment is exceeded by the value of
15 continuing to have the vendor work.

16 Unlike with employees, there's a judgment call
17 involved with this type of motion. As I said before in
18 response to the U.S. Trustee, I think it's a judgment call
19 that the Debtors in this case, heavily assisted by their
20 professionals, should be making. I think the Debtors fully
21 understand that based on the statements in the motion.

22 They'll also have a committee looking over their
23 shoulder eventually to make sure that they've done it right,
24 which is another level of assurance that they will do it
25 right. So, you can email that order to chambers.

1 MS. MARCUS: Thank you, Your Honor. Item Number
2 10 on the agenda is the Debtors' request for interim and
3 final orders authorizing payment of prepetition claims
4 related to certain lienholders, shippers, warehouses and
5 others, who have similar claims.

6 Specifically, the Debtors seek authority to pay
7 the following categories of claims: shipping and warehousing
8 charges, non-merchandise lien claims, such as those of
9 repairman and other third-party service providers; PACA and
10 PACLA claims, which are claims related the Debtors' grocery
11 business, arising under the Perishable Agricultural
12 Commodity Pact, and the Packers and Stockers Act of 1921.

13 And finally, the last element of this motion, Your
14 Honor, is something of a comfort order that we're
15 requesting. We're requesting an order to provide assurance
16 to vendors who have merchandise orders that were placed
17 prepetition but have not yet delivered the goods, that if
18 they deliver the goods post-petition, their claims for those
19 goods will be treated as administrative expenses of these
20 cases under Exception 503(b) of the Bankruptcy Code.

21 I'm not aware of any objections, Your Honor, and
22 we would request that you grant the motion.

23 THE COURT: Right. Does anyone have anything to
24 say on this motion? Okay. Almost by definition, these
25 people are the critical vendors, or have, either because of

1 what they're providing or because of the rights they have
2 under either a statute or based on statutory lien rights,
3 and therefore, the same logic applies to this request for
4 relief that applied to the last one.

5 As far as the confirmation of the administrative
6 claim status, in my view, although they're both
7 administrative claims, 503(b)(1) is better than 503(b)(9),
8 but it's fine to say that in the order. I have no problem
9 with that.

10 MS. MARCUS: Thank you, Your Honor. The next
11 motion, Your Honor, Number 11 on the agenda, is Debtors'
12 motion for authorization to retain certain customer
13 programs. As we all know, Your Honor, customers are the
14 lifeblood of any retail business, particularly at a time
15 when stories in the media may have created uncertainty about
16 the future of this business.

17 The Debtors believe that it is essential that we
18 obtain this order so that we can provide assurance to our
19 customers that it is business as usual at Sears and Kmart,
20 at least from the customers' point of view.

21 In the motion, we describe a litany of customer
22 programs that we seek to continue, many of which involve
23 transactions that bridge the pre- and post-petition periods.

24 For example, we would like to honor programs
25 relating to returns and exchanges, sales promotions, coupon

1 programs, gift card programs, the Debtors' Shop Your Way
2 program, which I'm sure you'll be hearing more about as
3 these cases unfold; the Citibank Private Label credit card;
4 warranty and service programs; charitable programs.

5 None of these items are particularly large, but
6 together, they are critical and we would ask that the Court
7 approve the motion. If Your Honor is so inclined, we did
8 want to make one change to the proposed order at the request
9 of Citibank. So, not to jump the gun, but I'll read the
10 language into the record and we'll provide it in the revised
11 order.

12 It's in Paragraph 3 of the order, and we're adding
13 a few words. So, it will read, "The Debtors are authorized
14 but not directed to honor, perform under, and otherwise
15 satisfy all of their obligations in connection with the
16 Citibank credit card program, whether arising prepetition or
17 post-petition, including that limitation permitting and
18 affecting any rights to settle for recoupment thereunder,
19 maintaining, expending, renewing, replacing or amending the
20 letter of credit issued in connection therewith." And the
21 rest goes on just saying it's that, "extending, renewing,
22 replacing, or amending" that we have been asked to insert
23 into the order.

24 And with that, Your Honor --

25 THE COURT: Okay. But the Debtors' wouldn't do

1 anything out of the ordinary course as far as extending,
2 amending?

3 MS. MARCUS: That's correct.

4 THE COURT: Okay.

5 MS. MARCUS: That's correct.

6 THE COURT: All right.

7 MS. MARCUS: And we're not seeking to assume the
8 Citibank agreement. We're just seeking --

9 THE COURT: Performing under it. All right.

10 MS. MARCUS: That's correct.

11 THE COURT: So, I had -- on the return and
12 exchange, let me make sure I understand this. So, if the
13 store that you bought your lawnmower at is closing, you can
14 exchange it somewhere else? How is that going to work? Is
15 that what's intended?

16 MS. MARCUS: I don't think we're intending to pick
17 up the return policy with respect to GOB sales.

18 THE COURT: Okay.

19 MS. MARCUS: My understanding is that those --

20 THE COURT: No, I understand that.

21 MS. MARCUS: Yes.

22 THE COURT: And the GOB order, I think, will say
23 that. But I'm -- let's say you bought a lawn mower a month
24 ago and for whatever reason it doesn't work. So, that's not
25 -- it's not a GOB --

1 MS. MARCUS: Correct.

2 THE COURT: -- but the place that you -- the store
3 you bought it at is going to be closing, you know, let's
4 just assume for the moment it's going to close in December.
5 When it says that the Debtors are going to honor return and
6 exchange policies, does that mean you can take the lawnmower
7 to another store that's open like in, I don't know, Purchase
8 as opposed to White Plains?

9 MS. MARCUS: Let me confirm, but I think that is
10 the answer, Your Honor.

11 THE COURT: Okay. All right.

12 MS. MARCUS: And we think it's essential to
13 continue to have customers --

14 THE COURT: Right, because --

15 MS. MARCUS: -- continue buying and be able to do
16 that.

17 THE COURT: -- because the store that's open is
18 going to stay open and --

19 MS. MARCUS: Correct.

20 THE COURT: -- you want people to continue to shop
21 at Sears.

22 MS. MARCUS: That's correct.

23 THE COURT: Okay. Okay, does anyone have anything
24 to say on this motion?

25 MR. HUEBNER: Good afternoon again, Your Honor.

1 Marshall Huebner, Davis Polk, for Citibank.

2 Your Honor, when we handled the DIP order, you
3 indicated that the order would be entered with no further
4 changes other than discussed, and the parties could rely on
5 it.

6 Citibank is actually standing ready to send
7 today's wire transfer to Sears, which is actually in the
8 millions of dollars, in fact. It's not such a little
9 relationship at all, it's actually quite a big one. And
10 based on if Your Honor would orally indicate that the order
11 will be entered with the addition of the four words --

12 THE COURT: On this order?

13 MR. HUEBNER: -- Ms. Marcus read in we can
14 literally send the wire to them right now and
15 (indiscernible).

16 THE COURT: All right. That's exciting.

17 (Laughter)

18 MR. HUEBNER: And, Your Honor, I've also gotten
19 the bank to agree that we will actually replace your lawn
20 mower for you --

21 (Laughter)

22 MR. SCHROCK: -- (indiscernible).

23 THE COURT: Okay. Does anyone else have anything
24 to say on this motion? All right. I will grant the motion,
25 without the lawnmower, for interim approval of continuation

1 of the customer policies and programs.

2 MS. MARCUS: Thank you, Your Honor.

3 THE COURT: These are obviously all programs that
4 are intended to promote business. The more they work, or
5 the better they work, the more business there is. So,
6 again, there is a net benefit to the estate of paying what
7 arguably are out of the ordinary course payments of
8 prepetition debt.

9 MS. MARCUS: Thank you, Your Honor. We appreciate
10 the Citibank accommodation funding without having the order.

11 THE COURT: So, it's approved, except with that
12 one small change that was read into the record.

13 MS. MARCUS: Thank you, Your Honor. The next one,
14 Your Honor, is the Debtors' motion for authority to maintain
15 certain trust fund programs, to release certain funds held
16 in trust and to continue to operate such programs.

17 As set forth in the motion, the Debtors maintain a
18 variety of programs pursuant their state, collect funds on
19 behalf of unaffiliated third parties. The motion describes
20 various programs and provides a general range of the amounts
21 at issue.

22 Their arrangements, for example, regarding lottery
23 programs, franchises, third-party gift cards, Western Union,
24 both wire transfer and money orders, and CoinStar, that
25 machine that you can put your coins in to get change.

1 THE COURT: Right.

2 MS. MARCUS: The Debtors believe that continuation
3 of the trust fund programs is essential to their continued
4 operation and would not implicate the interests of their
5 creditors inasmuch as the funds are not property of the
6 Debtors' estate. And this is the motion where American
7 Greetings would be picked up as being --

8 THE COURT: What do they -- they have like trust
9 fund flowers, or what do they...?

10 MS. MARCUS: I think they're cards.

11 MR. SCHROCK: Gift cards.

12 THE COURT: Cards.

13 MS. MARCUS: Gift cards.

14 THE COURT: Oh, gift cards. Okay, that makes
15 sense. Okay. All right. Does anyone have anything to say
16 on this motion? Are you going to just -- we're relying on
17 the record that they're covered by this?

18 MS. MARCUS: No, I --

19 THE COURT: We're going to put it in the order?

20 MS. MARCUS: I think we'll put it in the order.

21 THE COURT: Okay. Okay, I'll grant this motion.
22 I view this really as a comfort order. I don't think the
23 Debtors could do anything with this money. But just to be
24 safe, it's fine to memorialize it in an order.

25 MS. MARCUS: And the last one -- well, the last

1 one that I'm responsible for -- is probably the most
2 complicated one, but it's also very important. It's the
3 Debtors' request for interim and final orders establishing
4 notification procedures and approving restrictions on
5 certain transfers of interest in and claims against the
6 Debtors, and the assertion of worthless stock deductions by
7 security holders.

8 As reflected in the motion, due to their losses
9 over the past several years, the Debtors have accumulated
10 net operating losses in excess of \$5 billion. This motion
11 is intended to preserve the Debtors NOLs, which are property
12 of the estate and may end up having substantial value.

13 The procedures outlined in the motion are designed
14 to avoid an inadvertent ownership change, which could impair
15 the value of the NOLs. In very brief terms, even though the
16 motion is very long, the motion seeks authorization to
17 establish a set of noticing procedures which will enable the
18 Debtors to monitor and make sure such an ownership change
19 does not occur.

20 Similar relief has been granted in other large
21 cases, and we request that the Court enter the order on an
22 interim basis.

23 THE COURT: Right. And the interim relief is as
24 to the -- for stockholders. If you're going to -- if
25 someone is going to do an L-5 plan, then you'll seek relief

1 for... Well, not then, but that's when the procedures would
2 kick in for --

3 MS. MARCUS: So, it --

4 THE COURT: -- for claim transfers. But you're
5 not seeking that on an interim basis today?

6 MS. MARCUS: It's the ability to -- we're not
7 seeking that on an interim basis today, but it's the ability
8 later to turn around and go back and compel certain people
9 to re-transfer.

10 THE COURT: If you're doing a --

11 MS. MARCUS: That's correct.

12 THE COURT: -- an L-5 plan that deals with debt.

13 MS. MARCUS: That's correct.

14 THE COURT: Okay. All right, does anyone have
15 anything to say on this motion?

16 These issues have been around for a long time, and
17 the -- I think the shareholder and claim trader community
18 has gotten reasonably comfortable with these specific
19 procedures that are laid out in this motion, which are the
20 same procedures that, as you said, have been approved in a
21 number of cases over the years, where net operating loss and
22 other tax benefits are potentially significant for the
23 Debtors estate.

24 I went through the procedures pretty carefully and
25 compare them to procedures that I previously approved, and

1 then my colleagues have approved. They're basically the
2 same. And the underlying premise for the relief is
3 accurately laid out in the motion.

4 So, on an interim basis, I'll grant the relief
5 sought. Given the size of the net operating loss here, it's
6 a potential significant asset that needs to be protected.
7 The notice, which is to be provided only by large
8 shareholders -- you have to be getting close to five percent
9 -- should not be particularly onerous for any shareholder
10 here that falls under that category.

11 So, you can email that order to chambers also.

12 MS. MARCUS: Thank you, Your Honor. And with
13 that, I'll cede the podium to my colleague, Paloma Van
14 Groll.

15 THE COURT: Oh, could I just -- on that motion --
16 and this relates to the next couple of motions -- you don't
17 really know who all the shareholders are. Do you have a
18 sense of who the large shareholders are, besides ESL? So,
19 are you giving actual notice to them, or are you basically
20 relying on the publication notice and the record of this
21 hearing?

22 MS. MARCUS: We know some, Your Honor.

23 THE COURT: All right.

24 MS. MARCUS: But we are pretty much relying on the
25 --

1 THE COURT: So, you'll give the ones you actually
2 know notice, and then rely on publication for the rest?

3 MS. MARCUS: Yes.

4 THE COURT: Okay. All right.

5 MS. MARCUS: And then Ms. Van Groll will handle
6 the balance of today's agenda.

7 THE COURT: Okay.

8 MS. VAN GROLL: Good afternoon, Your Honor.

9 Paloma Van Groll --

10 THE COURT: Good afternoon.

11 MS. VAN GROLL: -- of Weil Gotshal & Manges,
12 proposed counsel to the Debtor.

13 THE COURT: Good afternoon.

14 MS. VAN GROLL: Your Honor, the next item on the
15 agenda, Docket Number 28, which is the Debtors' motion for
16 an extension of time to file schedules and SOFAs. We
17 believe due to the size and complexity of these cases that
18 45 days, plus the 14 that we have under statute, so in total
19 a month and two days would be sufficient to get the
20 schedules and SOFAs on file. But we reserve the right to
21 request additional time if we need it.

22 THE COURT: Okay. And are you amenable to making
23 it a top 40 instead of a top 20?

24 MR. SCHROCK: Yes.

25 MS. VAN GROLL: Yes. I think we're amenable to

1 that.

2 THE COURT: Okay. All right. Does anyone have
3 anything to say on this motion? All right. Given the size
4 and complexity of the Debtors' asset and debt picture, I
5 believe the Debtors have laid out sufficient cause for their
6 requested extension. Obviously, at some point on your
7 timeline you're going to have to do this and get out a
8 notice, but I think it just works, looking at your timeline.
9 So, I'll grant the relief.

10 MS. VAN GROLL: Thank you, Your Honor.

11 THE COURT: Okay.

12 MS. VAN GROLL: The next item on the agenda is
13 Docket Number 21, which is the Debtors' motion waiving the
14 requirement to file a creditor list, equity holder list, and
15 authorizing certain notice procedures in connection with the
16 commencement of these cases.

17 THE COURT: Okay. Does anyone have anything to
18 say on this motion? All right. I will grant this relief
19 for the relief stated in the motion. It ties into the
20 relief stated in the motion. It ties into the Prime Clerk
21 motion, which is next. Given their role in the case and the
22 extension of time that I just granted, this motion makes
23 sense. So, I'm granting it.

24 MS. VAN GROLL: Thank you, Your Honor. The next
25 and last item on the agenda is at Docket 27, which is the

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1 Debtors' application for authorization to appoint and obtain
2 Prime Clerk as claims and noticing agent to the Debtors.

3 Your Honor, we have reviewed the motion with the
4 clerk's office and we've incorporated the changes they had
5 and we believe they've signed off.

6 THE COURT: All right. They've confirmed that to
7 me. This is largely their motion rather than mine, since
8 Prime Clerk would be acting as their agent in essence. But
9 based on my review it's consistent with similar orders that
10 I've granted in the past. So, I'll grant this motion also.
11 You can email that order to chambers.

12 MS. VAN GROLL: Thank you, Your Honor. We'd just
13 like to note for the record a correction to Paragraph 6 of
14 the Steele declaration. It should say that Prime Clerk ran
15 conflicts against the Debtors' top 50 general unsecured
16 creditors, and not the top 100.

17 THE COURT: I'm sorry?

18 MS. VAN GROLL: That Prime Clerk ran conflicts
19 against the Debtors' top 50 general unsecured creditors, and
20 not the top 100 (indiscernible).

21 THE COURT: Okay. All right. But they're -- I
22 mean, they're the noticing agent, so I'm not too bothered by
23 that.

24 MS. VAN GROLL: Exactly.

25 THE COURT: Okay.

1 MS. VAN GROLL: Thank you, Your Honor. I believe
2 this concludes our presentation. Thank you for your time.

3 THE COURT: Okay. Thank you.

4 MR. SCHROCK: Thanks very much, Your Honor.

5 THE COURT: Okay.

6 MR. SCHROCK: See you very soon.

7 THE COURT: Okay.

8 (Whereupon these proceedings were concluded at
9 0:00 PM)

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1 C E R T I F I C A T I O N

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3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

5

Sonya
6 Ledanski Hyde

Digitally signed by Sonya
Ledanski Hyde
DN: cn=Sonya Ledanski Hyde, o,
ou, email=digital1@veritext.com,
c=US
Date: 2018.10.16 16:56:55 -04'00'

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8 Sonya Ledanski Hyde

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15

16

17

18

19

20 Veritext Legal Solutions

21 330 Old Country Road

22 Suite 300

23 Mineola, NY 11501

24

25 Date: October 16, 2018